

ARKANSAS SUPREME COURT

No. 08-1387

Opinion Delivered February 26, 2009

FRANK WATTS II
Petitioner

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION, AND MARK CASHION,
WARDEN
Respondents

PRO SE MOTION, AMENDED
MOTION, AND RENEWED MOTION
FOR BELATED APPEAL AND
MOTION FOR MODIFICATION OF
APPEAL LABEL [CIRCUIT COURT OF
CHICOT COUNTY, CR 2007-48, HON.
ROBERT BYNUM GIBSON, JUDGE]

MOTION, AMENDED MOTION, AND
RENEWED MOTION FOR BELATED
APPEAL DENIED; MOTION FOR
MODIFICATION OF APPEAL LABEL
MOOT.

PER CURIAM

On March 5, 2007, petitioner Frank Watts II, a prisoner in the custody of the Arkansas Department of Correction, filed in the circuit court in the county in which he was incarcerated a pro se petition for writ of habeas corpus. He subsequently filed a motion and amended motion for “default judgment,” asking that the relief sought be granted on the ground that there had been no response filed. An order was entered November 26, 2007, granting a default judgment, but the order was set aside by the court in an order entered January 4, 2008. In a separate order, also entered on January 4, 2008, the habeas petition was dismissed. An amended order dismissing the petition was entered on January 23, 2008. Petitioner timely filed notices of appeal from the two orders that pertained to the habeas petition, but he did not tender the record to this court until December 1, 2008, which was not within ninety days of the date of the notice of appeal as required by Arkansas Rule

of Appellate Procedure—Civil 5(a). Now before us are petitioner’s motion, amended motion, and renewed motion for belated appeal. The motion, amended motion, and renewed motion all seek to lodge the record belatedly with respect to the two habeas orders and leave to proceed with a belated appeal of the January 4, 2008, order that set aside the order granting a default judgment.

As a notice of appeal was timely filed on each of the two habeas orders, we treat the motion as a motion for rule on clerk to lodge the record with respect to those orders. *See Johnson v. State*, 342 Ark. 709, 30 S.W.3d 715 (2000) (per curiam). With respect to the January 4, 2008, order setting aside the default judgment, we treat the motion as a motion for belated appeal. As to all three orders, however, the issue is the same; that is, has petitioner stated good cause for his failure to conform to the prevailing rules of procedure.

Petitioner asserts that he should be permitted to proceed with the appeal of the three orders because the notices of appeal he filed encompassed all orders entered and the circuit clerk was at fault in not causing the record on appeal to be prepared and timely lodged here. If a pro se petitioner fails to file a timely notice of appeal or to perfect an appeal after a timely notice is filed, the burden is on the petitioner to make a showing of good cause for the failure to comply with proper procedure. *See Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (per curiam). Proceeding pro se does not in itself constitute good cause for the failure to conform to the prevailing rules of procedure. *Walker v. State*, 283 Ark. 339, 676 S.W.2d 460 (1984) (per curiam); *Thompson v. State*, 280 Ark. 163, 655 S.W.2d 424 (1983) (per curiam); *see Sullivan v. State*, 301 Ark. 352, 784 S.W.2d 155 (1990) (per curiam).

It is not the responsibility of the circuit clerk, or anyone other than the pro se party desiring to appeal, to perfect the appeal. *See Sullivan v. State, supra*. The pro se litigant receives no special

consideration on appeal and bears the burden of conforming to the prevailing rules of procedure. *Elliott v. State*, 342 Ark. 237, 27 S.W.3d 432 (2000); *see Gibson v. State*, 298 Ark. 43, 764 S.W.2d 617 (1989). He or she may not shift that burden to the circuit clerk. It was the duty of the petitioner to file a timely notice of appeal as to the January 4, 2008, order setting aside the order granting a default judgment and to tender the record to this court in a timely manner with respect to the orders pertaining to the habeas petition. As he has not established good cause for his failure to do so, the motion to proceed with an appeal of any of the three orders is denied.

Finally, petitioner filed a motion asking that the label on letters to him from one of our staff attorneys be modified to reflect that the motion for belated appeal concerns the January 4, 2008, order setting aside the default judgment as well as the habeas orders. As the motion and renewed motion for belated appeal are denied, that motion is moot.

Motion, amended motion, and renewed motion for belated appeal denied; motion for modification of appeal label moot.